

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SWEET GRASS - BASIN (43BV)

CLAIMANTS: Tyson Gregorich; Rebecca Gregorich

CASE 43BV-0308-R-2023
43BV 30145136

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Tyson Gregorich and Rebecca Gregorich are the record owners of stock claim 43BV 30145136.
2. Claim 43BV 30145136 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43BV DECREE ISSUED 12/19/1984.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

All DNRC issue remarks must be resolved.

3. Claim 43BV 30145136 was claimed and decreed with a 1984 priority date. Claim 43BV 30145136 is a claim for groundwater using a developed spring; the statement of claim indicates a spring box is the means of diversion. The point of diversion and place of use for the stock claim is in the SESESW of Section 28, Township 1 North, Range 16 East, Sweet Grass County. No information was provided with the Statement of Claim to support the type of historical use or the priority date.

4. An Order Consolidating and Order Setting Filing Deadline was issued on March 13, 2023 setting a deadline for Claimants Tyson Gregorich and Rebecca Gregorich to file a statement agreeing or disagreeing that claim 43BV 30145136 be dismissed and to file evidence supporting the type of historical right and priority date for claim 43BV 30145136. (Doc.¹1.00).

5. On April 24, 2023, Claimants Tyson Gregorich and Rebecca Gregorich filed a statement indicating they disagree claim 43BV 30145136 should be dismissed and that documentation exists supporting use of the claim prior to 1973. (Doc. 2.00).

6. On April 24, 2023 this Water Master spoke with Rebecca Gregorich by telephone. This Water Master indicated another Order would be issued explaining the next steps in the process. During the conversation, Rebecca Gregorich indicated she located a Declaration of Vested Groundwater Right that may help resolve the issue for the claim, she filed it on the same day. (Doc. 3.00). Review of the Declaration of Vested Groundwater Right filed on April 24, 2023 indicates the filing is for a well in the SWNW of Section 28, Township 1 North, Range 16 East.

7. As the Declaration of Vested Groundwater Right filed on April 24, 2023 did not appear to describe the spring described by claim 43BV 30145136, the Order was issued providing time for Claimants Tyson Gregorich and Rebecca Gregorich to establish the pre-1973 priority date for claim 43BV 30145136 and to provide evidence supporting the priority date and claimed type of historical right. (Doc. 4.00). The Order indicated

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

that if nothing were filed by the deadline, this Master would conclude the Claimants do not have evidence supporting a pre-1973 priority date for claim 43BV 30145136 and a Master's Report would be issued recommending dismissal of the claim. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. Pursuant to the Montana Water Use Act, a statement of claim was required to be filed to assert a claim to an existing right to the use of water arising prior to July 1, 1973. 85-2-212, MCA. "Existing right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. Based on the record, it does not appear claim 43BV 30145136 is an existing right.

RECOMMENDATION

1. Claim 43BV 30145136 should be dismissed.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Tyson Gregorich
Rebecca Gregorich
P.O. Box 1472
Big Timber, MT 59011

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 30145136 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: DISMISSED

Owners: TYSON GREGORICH
PO BOX 1472
BIG TIMBER, MT 59011

REBECCA GREGORICH
PO BOX 1472
BIG TIMBER, MT 59011

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.